

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOSEPH RAPPOSELLI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 07C-03-027 (CHT)
	:	
STATE FARM MUTUAL	:	
AUTOMOBILE INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	
	:	
	:	

OPINION AND ORDER

**In Response to Plaintiff's Motion for Costs and
Interest**

Richard A. Zappa, Esquire, YOUNG CONAWAY STARGATT & TAYLOR, LLP, The Brandywine Building, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, DE 19899-0391, Attorney for Plaintiff.

Susan List Hauske, Esquire, TYBOUT, REDFEARN & PELL, 750 Shipyard Drive, P.O. Box 2092, Wilmington, DE 19899, Attorney for Defendant.

TOLIVER, JUDGE

Date: 4/1/09

Before the Court is Plaintiff Joseph Rapposelli's motion for taxation of costs and prejudgment interest following a jury verdict rendered in favor of the Plaintiff in an action against Defendant State Farm Mutual Automobile Insurance Company. Plaintiff claims to be entitled to \$6,494.70 in court costs and expert fees and \$26,895 in prejudgment interest. Defendant opposes the Plaintiff's motion in part. Oral argument was held on November 18, 2008. That which follows is the Court's response to the issues so presented.

**STATEMENT OF FACTS AND
NATURE OF THE PROCEEDINGS**

By way of background, this action arose as a result of a motor vehicle accident on January 2, 2004. On that date, a car driven by Doris Stanford collided with one being operated by the instant Plaintiff, Mr. Rapposelli. Ms. Stanford admitted that her conduct was negligent and that as a result, Mr. Rapposelli suffered injury to his head, back and neck.

Based on that admission and its view of the extent of

the aforementioned injuries, Ms. Stanford's automobile liability insurer tendered the limits of her liability coverage, \$15,000, to avoid any further responsibility for the accident. On May 20, 2004, Mr. Rapposelli accepted the offer. However, he reserved the right to pursue a claim for underinsured motorist ("UIM") benefits under a policy of insurance he had previously purchased from State Farm and which was in effect at the time of his accident with Ms. Stanford.

It is not disputed that the State Farm policy at issue here provided for, among other things, payment of compensation for injuries suffered as a result of a motor vehicle accident where the tortfeasor was driving without any insurance or the insurance carried was insufficient to fully compensate the injured party. That coverage was limited to payment of compensation of up to \$100,000 after deducting the limits of the liability coverage paid by the tortfeasor. Mr. Rapposelli made a demand for that coverage which State Farm refused, resulting in the initiation of this litigation on March 2, 2007.

In his complaint, Mr. Rapposelli alleged that Ms.

Stanford's liability insurer exhausted the limits of the available coverage and that he had met all of the conditions of his policy with State Farm necessary to secure the payment of additional compensation. That compensation, he contended, exceeded \$100,000 and therefore the limits of the UIM coverage that he had purchased.

On May 18, 2007, State Farm filed its answer to the Rapposelli complaint denying that any compensation was due over that paid by or on behalf of Ms. Stanford. It also raised certain affirmative defenses including the alleged failure of Mr. Rapposelli to satisfy the conditions precedent to recovering any UIM benefits available under the policy. Lastly, State Farm claimed that Mr. Rapposelli failed to state a claim for which such benefits could be paid.

The trial of the matter began before a jury on July 7, 2008. Two days later, a verdict was returned in favor of Mr. Rapposelli in the amount of \$85,000. That figure was reduced by the \$15,000 paid by Ms. Stanford's liability insurer, leaving a net figure of \$70,000.

On July 15, 2008, Mr. Rapposelli filed the instant motion seeking witness fees, costs and interest. The application for fees and costs was made pursuant to 10 Del. C. §8906 and Superior Court Civil Rule 54. The interest claimed by the Plaintiff started as of the date of the underlying accident pursuant to 6 Del. C. §2301(d).¹

The Defendant responded to the Plaintiff's motion on July 23, 2008. It did not oppose the motion in so far as it pertained to the fees and costs sought. The Defendant did contest, however, the Plaintiff's request for prejudgment interest. To be specific, the Defendant contends that §2301(d) applied only to tort actions, not this litigation, which arose out of a contract between the parties. The interest should therefore not begin to accrue from the entry of the judgment, or until July 9, 2009.

¹ Hereinafter referred to by section only.

DISCUSSION

Based upon the submissions of the parties, it is clear that the sole issue to be decided by this Court is whether Plaintiff is entitled to prejudgment interest under §2301(d). That statute reads:

In any tort action for compensatory damages in the Superior Court or the Court of Common Pleas seeking monetary relief for bodily injuries, death or property damage, interest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days in an amount less than the amount of damages upon which the judgment was entered.²

Resolution of this matter obviously depends on whether an UIM action may be considered a "tort action" under §2301(d). That process requires that one view the policy underlying the statute and the positions taken by the parties during the litigation as well as prior decisions characterizing actions to enforce UIM claims. Having now had the opportunity to do so, for the

² 6 Del. C. §2301(d).

following reasons, the Court holds that this was a contract act and is therefore not subject to the provisions of §2301(d).

Contentions of the Parties

The Plaintiff contends that this is essentially a tort action. The issues are the same, i.e., the Plaintiff must establish that the tortfeasor was negligent, that said negligence proximately caused injury to the Plaintiff and the extent of any damages suffered as a result. Indeed, the insurer stands in the place of the tortfeasor. The only significant difference is that any recovery obtained cannot exceed the coverage which an insured purchased from the defendant insurer. Lastly, the Plaintiff argues that the purpose of §2301(d) is to promote earlier settlement of claims by increasing fair offers from defendants sooner thereby reducing court congestion.

The Defendant counters with the argument that §2301(d) is limited by its terms to tort actions and the instant litigation does not fall into that category of

cases. Instead, the Plaintiff is seeking to enforce the obligations allegedly owed to him by the Defendant under the terms of the contract of insurance in question. Stated differently, the Defendant claims that this can only be characterized as a breach of contract action.

In response to the Plaintiff's argument regarding the purpose of §2301(d), the Defendant contends that it would be unfair to assess interest against an UIM insurer from the date of the accident. There is no such claim against the insurer on that date. The UIM claim, if any, can only mature after the claim against the tortfeasor is resolved, assets available to the tortfeasor are exhausted and the UIM insurer declines coverage. Imposition of interest before that point in time predates any obligations under the contract of insurance.³ The insurer, the Defendant contends, has no control over when the claim against the tortfeasor is resolved but would be penalized in any event if interest were awarded in this context.

³ Nor can there be said to have been a breach of that contract until a jury or judge awards compensatory damages in excess of the recovery from the tortfeasor.

Authority

While there does not appear to be authority directly on point, the decision by the Delaware Supreme Court in *Allstate Ins. Co. v. Spinelli*, is extremely helpful.⁴ In *Spinelli*, litigation instituted in the Court of Chancery, the insurer argued that the applicable statute of limitations was that which governed tort actions, 10 Del. C. §8106, and not that which governed breach of contract disputes, 10 Del. C. §8106. As a result, the insurer claimed that the suit against it for *uninsured motorist benefits*⁵ was barred. The Court of Chancery disagreed, concluding that the three year statute of limitations in §8106 applied and began to run when the uninsured motorist status of the tortfeasor had been determined. The insurer appealed.

The Supreme Court agreed with the Court of Chancery that §8106 applied to the dispute between insurer and its

⁴ 443 A.2d 1286 (Del. 1982).

⁵ Uninsured motorist coverage as opposed to underinsured motorist coverage, is insurance for an operator of a motor vehicle who was involved in a collision with and is legally entitled to recover damages from another driver who carried no liability insurance. See 18 Del. C. § 3902(a).

insured when the contest concerned uninsured motorist benefits. It stated:

We conclude that a suit for recovery of uninsured motorist benefits is more nearly akin to a contract claim than a tort action and, hence, should be controlled by our contract rather than our tort statute of limitations. . . . We hereby adopt the view held by the majority of jurisdictions-that actions based on uninsured motorist coverage claims are actions *ex contractu* and as such are controlled by the applicable contract statute of limitations.⁶

Notwithstanding its agreement with the Court of Chancery's determination as to which statute of limitations applied, the Supreme Court nevertheless disagreed with the lower court's view of when the statute

⁶ *Id.* at 1290 (citations omitted). In reaching this result, the Supreme Court quoted the description of the majority view by Chancellor Marvel of the Court of Chancery in *Spinelli v. Allstate Ins. Co.*, 1980 WL 268075 at *2 (Del. Ch. Sep. 17, 1980), as follows:

The view accepted generally is that despite the requirement that the insured must establish that a tort was committed by an uninsured motorist and that injury ensued, the action is nevertheless one based upon an insurance contract, on the basis of which the liability, if any, of the insurer is found, such contract limitation accordingly controls. . . . The personal injuries suffered by a plaintiff are thus not the basis of the cause of action but merely the basis for measuring the damages sustained. (Citations omitted.)

began to run. In distinguishing uninsured motorist benefits from personal injury protection benefits in this regard, the Court went on to state:

In contrast, uninsured motorist statutory benefits . . . are not embraced within the no-fault concept of an immediate assertable right as [*Nationwide Insurance Company v. Rothermel*, 385 A.2d 691 (Del. 1978)] found to be the intent of 21 Del. C. §2118(a). Indeed, a claim for uninsured motorist benefits, by its very nature, becomes "operative", not upon the occurrence of a motor vehicle accident, but only after the claimant-insured has established that he/she is "legally entitled to recover damages from (the) owners or operators of (the) uninsured or hit-and-run motor vehicle.

Further, while a PIP claim arises against the insurer as a direct result of an accident, an uninsured motorist claim is only indirectly related to the accident itself.

Finally, the Supreme Court, in support of its decision as to when the application of the longer statute of limitations should begin to run, noted that the insured could not assert a claim against the insurer, and therefore had no standing to do so until the insured had met two conditions. To be specific, the Court recognized

that the insured had to first legally establish his right to recover against the tortfeasor. That individual then had to establish as well that the tortfeasor was an uninsured motorist or operator of an uninsured vehicle for purposes of the relevant policy.⁷

The reasoning in *Allstate v. Spinelli* and the cases relied upon in that decision are persuasive and should be applied to the resolution of the instant dispute. This is not a tort action seeking compensatory damages. Consequently, §2301(d) does not apply and the Plaintiff is not entitled to interest from the date of the injury, January 2, 2004.

Simply put, this is a cause of action to determine the amount of compensation due under the terms of the UIM coverage purchased by the Plaintiff from State Farm as set forth in the policy of insurance issued by the latter to the former. The parties were unable to agree as to

⁷ As the Supreme Court noted, the Allstate policy purchased by the plaintiff in that case included an "underinsured tortfeasor" in the definition of an uninsured motorist for purposes of determining who was covered thereby. The definition of an uninsured motorist in the State Farm policy here appears to contain a similar definition.

how much, if any, compensation is due the Plaintiff under the terms of that contract and have brought this action to enforce the same. Although styled as a civil personal injury action by the parties in case information statements filed with both the complaint and the answer, those designations are not controlling or significant.

At various points in the process leading up to and including the trial, the parties have generically referenced the litigation as an action to collect UIM benefits.⁸ In addition, the Court, on at least one occasion, admitted evidence based upon its view that the matter was being litigated as a breach of contract action.⁹

There is no other connection between the Defendant and the Plaintiff. Like the statute of limitations issue

⁸ See Docket 25 Pretrial Order at # 1(a), 1(b), 4(b), 7, 13(a)(1); see Docket 25 Pl.'s Voir Dire Submission (Intro.); see Docket 25 Pl.'s Proposed Jury Instructions (Nature of the Case); see Docket 29 Final Jury Instructions (Nature of the Case).

⁹ More specifically, in a conference with the attorneys just before trial began, the Court ruled, over the Defendant's objection, that since the litigation was being prosecuted and defended as a breach of contract action, the Plaintiff could introduce the insurance policy and inform the jury of its terms, including the amount or limits of UIM coverage available.

in *Allstate v. Spinelli*, whether the instant Defendant has any obligation as well as the extent of that obligation under the insurance policy at the center of this controversy, cannot be determined unless and until the case against tortfeasor was resolved in the Plaintiff's favor and the liability insurance coverage available to the tortfeasor is tendered. Then and only then can the UIM coverage be addressed.

The fact that tortious activity is the subject matter of the instant contract does not and cannot determine the nature of an obligation to enforce that agreement. Rather, as noted, again in *Allstate v. Spinelli*, the underlying tort and the consequences thereof, constitute no more than the measure of the insurer's obligations under the policy of insurance. It does not determine when those obligations begin.

Furthermore, if the purpose and/or policy underlying §2301(d) is to encourage prompt and early settlement of tort litigation, that goal would certainly not be advanced by requiring the Defendant to pay interest from the date of the accident or tort. The insurer does not

control the resolution of any claim the policyholder may have against the tortfeasor or the time it takes to do so. Until that portion of the equation is completed, an insurer would not know if it has an obligation to provide UIM benefits. To penalize an insurer by charging interest from the date of the tortious activity under such circumstances, would be at the very least unfair, if not arbitrary and capricious.

To the extent that the Plaintiff argues that a ruling by this Court in favor of the Defendant would also make §2301(d) inapplicable to other claims arising from a statute for compensatory damages resulting from tortious activity, the Plaintiff is incorrect.

First, as stated above, the finding that §2301(d) does not apply to the instant litigation is limited to the facts of this case. Whether a cause of action arising under an unrelated statutory scheme, as opposed to an action based upon a contract, constitutes a "tort action for compensatory damages" for purposes of §2301(d), is simply not relevant in resolving any of the issues to be decided in this litigation. Nor would the

reasoning set forth above apply to any such statutorily based causes of actions.

Second, however it is viewed, the causes of action referenced by the Plaintiff involve direct disputes between parties created as well as defined but not limited by the enabling statutes referenced by the Plaintiff. The relief sought here is limited as well as defined by the insurance policy at the center of this controversy. Moreover, an assessment of the respective obligations of the parties that may be involved in any of the enumerated statutory causes of action are not delayed or dependent upon acts those not involved in that dispute, which is not the case in this litigation.

Conclusion

____Based on the foregoing, that portion of the Plaintiff's motion for taxation of costs is **granted** and the Plaintiff is awarded \$6,494.70. To the extent that the Plaintiff seeks to impose interest based upon 6 Del. C. §2301(d) from January 2, 2004, the date he was injured as a result of a motor vehicle collision, his motion is **denied**. Accrual of interest on the judgment shall begin as of July 9, 2008, the date judgment was entered in this matter.

IT IS SO ORDERED.

TOLIVER, JUDGE